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1 **§ 101 Rejections**

2 The Office Action rejects claims 1 and 11 under 35 U.S.C. § 112 as
3 allegedly being indefinite. Without conceding the propriety of the stated rejection,
4 and only to expedite prosecution of this application, Applicant has amended claims
5 1 and 11 as suggested by the Office. Accordingly, Applicant respectfully requests
6 that the rejection be withdrawn.
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9 **§ 103 Rejections**

10 The Office Action rejects claims 1-15 under 35 U.S.C. § 103(a), as being
11 unpatentable over U.S. Patent No. 6,665,729 to Walker, et al. (hereinafter,
12 “Walker”) in view of U.S. Patent Publication No. 2004/0001514 to Wookey, et al.
13 (hereinafter, “Wookey”).
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15 **Claim 1** is directed to a process and recites:

- 16
- determining a size of a data structure;
 - 17 • selecting a data streaming protocol when the size exceeds a
18 predetermined limit;
 - 19 • selecting a buffered data protocol otherwise;
 - 20 • sending data of the data structure consistent with the selected
21 protocol.
- 22

23 Applicant submits that the Office has failed to establish a §103 rejection of
24 claim 1 for at least two reasons. First, the art of record fails to describe, teach, or
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1 suggest all of the recited claim elements. Second, the Office offers insufficient
2 motivation for the Office's proposed combination of Walker and Wookey.

3 In looking for the recited claim elements, the Office notes that Walker does
4 not teach all of the recited claim elements. The Office then looks to Wookey to
5 teach the missing elements. However, Applicant respectfully notes that the Office
6 has mischaracterized the recited claim elements of: selecting a data streaming
7 protocol when the size exceeds a predetermined limit; selecting a buffered data
8 protocol otherwise; sending data of the data structure consistent with the selected
9 protocol in making out the rejection. For instance, the Office states that Walker
10 does not describe "bulk data protocol". The Office then points to paragraph 297 of
11 Wookey as teaching "bulk data protocol". However, bulk data protocol is not the
12 missing claim element(s). Applicant respectfully submits that neither paragraph
13 297 specifically nor the remainder of Wookey (nor Walker) teach the selecting or
14 sending elements recited in claim 1. Upon careful examination of the references,
15 Applicant respectfully requests that the Office identify with particularity where the
16 recited selecting and sending elements are taught by the art of record. Lacking
17 such, Applicant respectfully requests that the §103 rejection be withdrawn.

18 Further, the record contains insufficient motivation in that the proposed
19 combination renders the primary reference (Walker) inoperable. Walker describes
20 reducing system delays for whatever protocol is employed on the system.
21 Specifically, in relation to Col. 5 and Fig. 4, Walker describes: receiving a packet,
22 and examining a packet header to determine a protocol employed by the server. If
23 a streaming protocol is employed by the server no further action is taken (i.e., the
24 client acts in a traditional manner). If a transaction based protocol is being
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1 employed the client takes actions to decrease latency in receiving a last packet of a
2 set of packets. In no instance, does Walker describe selecting a protocol at all. In
3 fact, the overall purpose of Walker is to decrease network latency with whatever
4 protocol is being utilized. Accordingly, Walker does not teach any protocol
5 selecting process. Even considering arguendo that Wookey described the selection
6 element; the Office's proposed combination would defeat Walker's described
7 invention of decreasing network latency with whatever protocol comes down the
8 line. At the very least, Walker teaches directly away from the proposed
9 combination. For these reasons, insufficient motivation exists in the record for the
10 Office's proposed combination. Accordingly, Applicant respectfully requests that
11 the §103 rejection of claim 1 be withdrawn.

12 **Claims 2-10** depend from allowable claim 1. These claims are also
13 allowable for their own recited features which, in combination with those recited
14 in claim 1, are neither disclosed nor suggested by the references cited and applied
15 by the Office.

16 **Claim 11** is directed to a system for handling messages. Applicant submits
17 that the Office has failed to establish a §103 rejection of claim 11 at least for the
18 reasons described above in relation to claim 1. Accordingly, Applicant
19 respectfully requests that the §103 rejection of claim 11 be withdrawn.

20 **Claims 12-15** depend from allowable claim 11. These claims are also
21 allowable for their own recited features which, in combination with those recited
22 in claim 11, are neither disclosed nor suggested by the references cited and applied
23 by the Office.
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1 Conclusion

2 Applicant respectfully requests reconsideration and withdrawal of the
3 rejections of the pending claims. If personal discussion would advance
4 prosecution of this application, the Office is urged to contact the undersigned
5 attorney before issuing a subsequent Action.
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10 Respectfully Submitted,

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14
15 Dated: 6/4/07



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